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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Richard D Harvey,

10 Petitioner,

11 v.

12 David Shinn, et al.,

13 Respondents.
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No. CV-20-00476-PHX-DWL

ORDER

15 On March 2, 2020, Petitioner filed a petition for a writ of habeas corpus under 28
16 U.S.C. § 2254. (Doc. 1.) Petitioner thereafter filed an amended petition (Doc. 7) and a
17 second amended petition (Doc. 15), the latter of which serves as the operative pleading
18 (“the Petition”) in this case. On September 2, 2020, Magistrate Judge Fine issued a Report
19 and Recommendation (“R&R”) concluding the Petition should be dismissed with
20 prejudice. (Doc. 27.) Afterward, Petitioner filed objections to the R&R (Doc. 28) and
21 Respondents filed a response (Doc. 29). For the following reasons, the Court will overrule
22 Petitioner’s objections, adopt the R&R, and terminate this action.

23 I. Background

24 *The Guilty Plea And Sentencing.* In 2016, Petitioner was charged with various drug
25 crimes. (Doc. 27 at 2.) While represented by counsel, Petitioner pleaded guilty. (*Id.*)
26 Sentencing took place on April 25, 2018. (*Id.*) Petitioner received a 6.5-year sentence,
27 which was less than the presumptive sentence, with credit for time served. (*Id.*) Petitioner
28 also received, and signed, a “Notice of Rights of Review after Conviction and Procedure”

1 form, which explained that there is no right of appeal after a guilty plea, that a petition for
2 post-conviction relief (“PCR”) is the proper method to seek relief after a guilty plea, and
3 that a PCR notice must be filed within 90 days of entry of judgment. (*Id.*)

4 *PCR Proceedings.* Petitioner did not file a notice of appeal and did not file a PCR
5 notice within 90 days of entry of judgment.

6 In early 2020 (*i.e.*, more than a year and a half after entry of judgment), Petitioner
7 filed an untimely PCR notice. (*Id.* at 3.) Among other things, the PCR notice asserted that
8 Petitioner had not received full presentence incarceration credit. (*Id.*) The superior court
9 denied relief, holding that most of Petitioner’s challenges were untimely without excuse
10 and that the credit-related challenge failed on the merits. (*Id.*)

11 Petitioner did not seek further review of the denial of PCR relief. (*Id.*)

12 *The Petition.* As noted, Petitioner initially filed a § 2254 petition on March 2, 2020,
13 and his operative Petition is deemed filed as of that date. Petitioner asserts two grounds
14 for relief: (1) Fourth Amendment violations arising from the search that led to Petitioner’s
15 arrest and prosecution; and (2) an alleged violation of Petitioner’s Sixth Amendment rights
16 to a speedy trial and to effective assistance of counsel. (*Id.* at 3.) The Petition also asserts
17 that Petitioner didn’t seek relief earlier because “[t]he facts are it took me a while to study
18 the laws and the Constitution Rights along with reasons that I didn’t know any legal
19 opportunities to aid and protect my rights. I was constructively denied counsel and
20 completely lost trust in the Judicial system of the State of Arizona and County of
21 Maricopa.” (*Id.*)

22 *The R&R.* The R&R concludes the Petition should be dismissed with prejudice
23 because it was filed outside AEDPA’s one-year statute of limitations. (*Id.* at 4-11.)
24 Specifically, the R&R explains that Petitioner’s state-court conviction became final on July
25 24, 2018 (*i.e.*, 90 days after entry of judgment), the one-year statute of limitations expired
26 on July 24, 2019, and Petitioner’s habeas filing in March 2020 therefore came too late. (*Id.*
27 at 4-6.) The R&R further explains that (1) Petitioner isn’t entitled to statutory tolling
28 because he didn’t file his PCR notice until early 2020, which was after the statute of

1 limitations had already expired; (2) Petitioner isn't entitled to equitable tolling (a) because
 2 his *pro se* status, indigence, limited legal resources, ignorance of the law, and lack of
 3 representation don't constitute "extraordinary circumstances," (b) although he asserted in
 4 his reply that he lacked access to the prison legal library until January 2019, this still left
 5 him with ample time to seek relief before the July 2019 deadline, and (c) he hasn't, in any
 6 event, shown that he was diligent in seeking relief; and (3) Petitioner isn't entitled to the
 7 equitable exception for actual innocence. (*Id.* at 6-11.)

8 II. Legal Standard

9 A party may file written objections to an R&R within fourteen days of being served
 10 with a copy of it. Rules Governing Section 2254 Cases 8(b) ("Section 2254 Rules"). Those
 11 objections must be "specific." *See* Fed. R. Civ. P. 72(b)(2) ("Within 14 days after being
 12 served with a copy of the recommended disposition, a party may serve and file specific
 13 written objections to the proposed findings and recommendations.").

14 District courts are not required to review any portion of an R&R to which no specific
 15 objection has been made. *See, e.g., Thomas v. Arn*, 474 U.S. 140, 149-50 (1985) ("It does
 16 not appear that Congress intended to require district court review of a magistrate's factual
 17 or legal conclusions, under a *de novo* or any other standard, when neither party objects to
 18 those findings."); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)
 19 ("[T]he district judge must review the magistrate judge's findings and recommendations
 20 *de novo* if objection is made, but not otherwise."). Thus, district judges need not review
 21 an objection to an R&R that is general and non-specific. *See, e.g., Warling v. Ryan*, 2013
 22 WL 5276367, *2 (D. Ariz. 2013) ("Because *de novo* review of an entire R & R would
 23 defeat the efficiencies intended by Congress, a general objection 'has the same effect as
 24 would a failure to object.'") (citations omitted); *Haley v. Stewart*, 2006 WL 1980649, *2
 25 (D. Ariz. 2006) ("[G]eneral objections to an R & R are tantamount to no objection at all."¹).

26 ¹ *See generally* S. Gensler, 2 Federal Rules of Civil Procedure, Rules and
 27 Commentary, Rule 72, at 422 (2018) ("A party who wishes to object to a magistrate judge's
 28 ruling must make specific and direct objections. General objections that do not direct the
 district court to the issues in controversy are not sufficient. . . . [T]he objecting party must
 specifically identify each issue for which he seeks district court review").

1 III. Analysis

2 In his objections to the R&R, Petitioner seems to raise two arguments. (Doc. 28.)
 3 First, Petitioner contends he is entitled to equitable tolling because “[h]ow do[] I prove my
 4 due diligence of learning the laws and my constitutional rights on my behalf being
 5 incarcerated in a totally locked down DOC facility?” (*Id.* at 1.) Second, Petitioner
 6 contends that Respondents’ failure to address his Fourth and Sixth Amendment claims on
 7 the merits demonstrates his entitlement to relief on those claims. (*Id.* at 1-2.)

8 Respondents only address Petitioner’s first argument. (Doc. 29.) They contend that
 9 the “current lockdown” in Petitioner’s facility “did not affect his due diligence when failing
 10 to properly present his claims to this Court.” (*Id.* at 2.)

11 Petitioner’s objections lack merit. As the R&R correctly notes, the key period for
 12 assessing equitable tolling is the one-year period after Petitioner’s state-court conviction
 13 became final, *i.e.*, from July 2018 to July 2019. This period predates the COVID-19
 14 pandemic, so the current lockdown in Petitioner’s facility is irrelevant. As for earlier
 15 lockdowns, Petitioner stated in the reply in support of the Petition that when he arrived at
 16 the Yuma facility, it was “on a total lockdown because of a riot that occurred . . . before I
 17 arrived,” but the lockdown only lasted “until Jan 2019” at which point the facility
 18 “return[ed] to normal operations.” (Doc. 26 at 6.) Given this backdrop, the Court agrees
 19 with and adopts the R&R’s conclusion that Petitioner is not entitled to equitable tolling.
 20 There were no extraordinary circumstances that prevented Petitioner from seeking relief
 21 by July 2019—and, indeed, Petitioner did not file his PCR notice until early 2020 and did
 22 not file his habeas petition until March 2020.

23 In light of this finding of untimeliness, there is no need to reach Petitioner’s second
 24 objection, which concerns the substantive merit of his habeas claims.

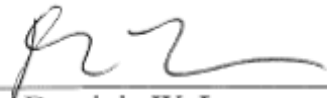
25 Accordingly, **IT IS ORDERED** that:

- 26 (1) Petitioner’s objections to the R&R (Doc. 28) are **overruled**.
 27 (2) The R&R’s recommended disposition (Doc. 27) is **accepted**.
 28 (3) The Petition (Doc. 15) is **dismissed with prejudice**.

1 (4) A Certificate of Appealability and leave to proceed *in forma pauperis* on
2 appeal are **denied** because the dismissal of the Petition is justified by a plain procedural
3 bar and reasonable jurists would not find the procedural ruling debatable.

4 (5) The Clerk shall enter judgment accordingly and terminate this action.

5 Dated this 14th day of October, 2020.

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10 Dominic W. Lanza
11 United States District Judge
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